

(1912) 03 CAL CK 0029
In the Calcutta High Court

Trinayani Dasi

APPELLANT

Vs

Krishna Lal De

RESPONDENT

Date of Decision : 19-03-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Court Fees Act, 1870 — Section 8
Land Acquisition Act, 1894 — Section 32

Citation : (1912) ILR (Cal) 906

Hon'ble Judges : Cecil Brett, J;Carnduff, J

Bench : Division Bench

Judgement

Cecil Brett and Carnduff, JJ.—In these appeals, the appellant seeks to have set aside an order passed by the Special Land Acquisition Judge of the 24-Parganas under the provisions of Section 32 of the Land Acquisition Act.

2. The property in respect of which compensation was awarded by the Collector was a portion of property which had been devoted to an idol. Out of this debutter property two houses have been acquired by "Government for public purposes. In the case out of which appeal No. 135 of 1910 arises, the house and the land attached are No. 40, Champatola 1st Lane; and in the case out of which appeal No. 136 of 1910 arises, the land and the building are No. 105, College Street--both in the town of Calcutta. No objection appears to have been taken to the amount of compensation awarded by the Collector; but the two sums deposited in respect of these two houses were claimed by Srimati Trinayani Dasi, the present appellant, on the ground that she was entitled to these sums as executrix to the will of her late husband Nanda Lal Dey.

3. Nanda Lal Dey died leaving him surviving his widow Trinayani Dasi and a son Lal Gropal Dey. Lal Gropai Dey died in 1903, and in 1909 Trinayani Dasi applied for probate of a will which she propounded as the last will of her husband, Nanda Lal Dey. Probate was granted to her, it being held that, under the terms of the will, she was appointed executrix by implication. Under the will the testator made

a debutter of all his immovable properties for the sheba of Iswar Sridharjiu Thakur, with the exception of a masonry building at No. 58, Nimu Khansama's Lane. He directed that his wife, Sreemati Trinayani Dasi, and his son, Lal Gopal Dey, should be the shebaites of this debutter property. He also directed that, out of the income of the debutter property, the shebaites would be entitled to a monthly allowance for their maintenance, and that the rest of the property was to be devoted to the worship of Iswar Sridhar Thakur.

4. Trinayani Dasi, having obtained probate of the will, put in two applications before the Special Land Acquisition Judge to withdraw the two sums of money which had been awarded as compensation for the two houses previously referred to. In each case she claimed to be entitled to the compensation money as the person who had the sole right to the money. An objection in each case was put in on behalf of the sons of Lal Gopal Dey by their mother, who appeared in the suits to represent them. In that objection it was prayed that the money in deposit should be invested in Government securities, and that only the interest should be paid over to the shebait. The learned Judge allowed the objection, and passed an order u/s 32 of the Land "Acquisition Act to the effect that the money would be invested in Government promissory notes, and that the applicant, Trinayani Dasi, would be entitled only to draw the interest on those notes pending her obtaining some special order from the Probate Court entitling her to withdraw the money.

5. Two appeals against the orders of the lower Court in these two references have been preferred to this Court by Trinayani Dasi. Each of these appeals has been filed on a stamp of Rs. 10 only, and a preliminary objection has been taken to the hearing of these appeals on the ground that they are not properly stamped. The institution fee of Rs. 10 has been paid under Article 17, Clause vi of Schedule II of the Court-fees Act.

6. The learned pleader who appears for the respondent, and who has raised the preliminary objection, contends that the present cases cannot come under Clause vi of Article 17, first, because, in these cases it is possible to estimate at a money-value the subject-matters in dispute, and, secondly, because they are otherwise provided for by that Act.

7. Taking the second point first, the learned pleader contends that the present cases fall within the provisions of Section 8 of the Court-fees Act, and that an ad valorem court-fee ought to have been paid on the memorandum of appeal in each case, computed according to the difference between the amount awarded and the amount claimed by the appellant. The learned pleader for the appellant has argued that, in these cases, there was in fact no award at all, and that the provisions of Section 8 cannot therefore be taken to apply. It seems, however, that these cases previously came before another Bench of this Court on a rule, issued u/s 115, Civil Procedure Code. The point was then considered whether or not an order u/s 32 of the Land Acquisition Act was a part of an award made in a proceeding under the Act within the meaning of Section 54, and this Court held; "that an order u/s 32 was such a part of an" "award within the meaning of

Section 54, and that the proper remedy for the petitioner in that rule, who was the present appellant, was by an appeal and not by an application in revision. We see no reason to differ from the view which was taken by the learned Judges in that case, and we hold that, in the present cases, the order u/s 32 of the Land Acquisition Act must be taken to be an award or part of an award made under the Act. The question whether an appeal lay in a case similar to the present and what, was the correct stamp payable on the memorandum of appeal came up for consideration before a Bench of the Allahabad High Court in the case of Sheo Rattan Rai v. Mohri ILR(1899) All. 354. That case was the converse of the present, and it was there held that an appeal lay against an order of the Land Acquisition Court refusing to pass an order u/s 32 of the Land Acquisition Act, and that the court-fee payable would be an ad valorem fee. A similar view was taken by the High Court of Madras in the case of Kasturi Chetty v. Deputy Collector Bellary ILR(1898) Mad. 269. We are of opinion that the contention advanced by the learned pleader for the respondent is correct, and that the present cases clearly do not fall within the provisions of the second portion of Clause vi of Article 17 of Schedule II of the Court-fees Act.

8. The learned pleader for the respondent has next contended that in the present appeals it is possible to estimate the relief claimed at a money-value. The petitioner claims to be entitled in her sole right to receive the full amount of the compensation in each case; but in each case the Judge of the Court below has held that she is not so entitled, and that she is a person who comes within the provisions of Section 32 of the Act and is incompetent to alienate the property. The only relief which the learned Judge has allowed her in each case is to draw the interest on the money while her claims to receive the full amount of the compensation has been disallowed. The relief sought in each of the present appeals is certainly therefore a relief which can be estimated at a money-value. This is in accordance with the view which was taken by this Court in the case of Bunwari Lal v. Daya Sunker Misser (1909) 13 C.W.N. 815 where it was held that to bring a case under the provisions of Clause vi of Article 17, Section II of the Court-fees Act, it must be established that it was not possible even to state approximately a money-value for the subject-matter in dispute. In the present cases even supposing that the exact estimate cannot be given, it is, in our opinion, certainly possible to state approximately the money value of the relief claimed.

9. The learned pleader for the appellant has, however, contended that his client in the present cases is not a person coming within the provisions of Section 32 of the Land Acquisition Act, because she made her claim in the Land Acquisition Court as an executrix and not as a shebait. We do not consider that there is much force in this contention; for, Section 90 of the Probate and Administration Act on which the learned pleader is inclined to place reliance in Sub-section (2), distinctly provides that the power of an executor to dispose of Immovable property ill subject to any restriction which may be imposed in this behalf by the will appointing him. The will under which the present appellant claims as

executrix it has been read to us, and we are of opinion that there,; can be no doubt that she has not as an executrix or a shebait any power to alienate the property We are of opinion, therefore, that the preliminary objection taken to the hearing of the present appeals must be allowed, and that before the appeals can be heard, proper court-fees must be paid. We hold that, in, our opinion, the court-fee payable on the memorandum of appeal in each case is that provided for in Section 8 of the Court-fees Act, and we direct that, the we cases be referred to the Taxing Officer in order that he may determine the court-fee payable on each appeal; and, if the deficit court-fee be deposited within a fortnight from the date of the decision of the Taxing Officer, the appeals be brought up again before us for disposal. Otherwise, the appeals will stand dismissed with costs.

10. The court-fees determined by the Taxing Officer. not having been paid within the time allowed, the appeals were dismissed.